

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE NO. 54 OF 1996**

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

M/S. GUJARAT INSECTICIDES LTD. - Opponent(s)

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Appearance :

MR. MANISH R. BHATT for Applicant(s).

NONE for Opponent(s) though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 06/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income-Tax Appellate Tribunal, Ahmedabad

Bench "A" in relation to I. T. Appeal No.254/Ahd/1990 relating to Assessment Year 1985-86, has referred the following question under Section-256(1) of the Income Tax Act, 1961 ("the Act" for short) for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the appellate Tribunal is right in confirming the CIT (A) decision, treating the technical know-how fee as revenue account?"

2. The Assessee had entered into a technical know-how agreement with M/s. Charda Chemicals Pvt. Ltd., Bombay by an agreement dated 25th February, 1983; a copy of another agreement dated 1st March, 1983 is also available on record. The agreement dated 25th February, 1983 provided that it would remain in force for a period of eight years from the date on which all the guarantees are given in favour of the Company are fulfilled by the consultants, as provided in Challan No.6 and 7, as per paragraph-21; on termination of the agreement at the end of eight years, the Company shall be entitled to retain the technical know how and processes supplied to it by the consultants and continue to use the same free of payment of any royalty. The fees provided to M/s.Charda Chemicals Pvt. Ltd. for obtaining the technical know-how

under the agreement was claimed as a deduction under the head of revenue expenditure. The Assessing Officer, observed that it could not be taken to be the revenue expenditure, but, it was a capital investment. He, accordingly, disallowed the deduction. The matter ultimately went to the Tribunal. The Tribunal held that in the given set of circumstances, the technical know-how would not add to the capital, but, would become more fruitful and under the circumstances, it would be revenue expenditure. The Revenue, being aggrieved by the said findings, prayed for a reference by making a application under Section-256(1) of the Act. Accordingly, the matter has been placed before us.

3. A Division Bench of this Court, in the matter of ***Commissioner of Income-Tax vs. Ashoka Mills Ltd.***, [(1996) 218 I.T.R. 526], has observed that:

"In order to determine whether an expenditure is of the nature of capital or revenue what is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's

business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future."

In the said case also, the Assessee had entered into an agreement with MB for user of the trademark "Tebilized". The agreement was only for a period of eight years and it was terminable on six months' prior notice which could be given by either party. In the said case, the expenses were claimed as deduction under the head of revenue expenditure.

4. In an identical situation, in the matter of ***Commissioner of Income-Tax vs. Indian Oxygen Ltd., [(1996) 218 I.T.R. 337]***, the Supreme Court has held that if no advantage of enduring nature had been obtained, then, the amount paid under collaboration agreement would be revenue expenditure.

5. Taking into consideration the totality of the circumstances and the nature of the benefits, which the Assessee was to derive from the technical know-how, we must hold that the Assessee was justified in claiming the deduction under the revenue expenditure. The Reference is

answered against the interest of the Revenue. It is disposed of accordingly. No costs.

[R.S.Garg, J.]

[D. H. Waghela, J.]

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